

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO. 5:02-CR-131-BO
NO. 5:11-CV-642-BO

MICHAEL EUGENE FARMER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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ORDER

This matter is before the Court on petitioner's motion for reconsideration [DE 117]. For the reasons stated herein, petitioner's motion is DENIED.

BACKGROUND

The Court incorporates by reference as if fully stated here its procedural and factual background included in its previous orders. [DE 70, 73, 83, 92, 101, 105]. The court of appeals has affirmed this Court's denial of Mr. Farmer's motion to reconsider its order dismissing his motion to vacate pursuant to 28 U.S.C. § 2255. [DE 98]. Mr. Farmer now asks that the Court again reconsider its dismissal of his motion to vacate in light of the panel opinion in *Whiteside v. United States*, 748 F.3d 541 (2014).

DISCUSSION

After Mr. Farmer filed the instant motion based on the panel decision in *Whiteside*, the Fourth Circuit, sitting en banc, vacated the panel decision and affirmed the district court's dismissal of Whiteside's petition as untimely. *Whiteside v. United States*, 775 F.3d 180 (4th Cir. 2014) (en banc). The Supreme Court declined to grant certiorari. *Whiteside v. United States*, 135 S.Ct. 2890 (2015). The court of appeals held in the en banc opinion that its decision in *United*

States v. Simmons, 649 F.3d 237 (4th Cir. 2011), represents a change in law, not in fact, and that a motion for *Simmons* relief cannot therefore be deemed timely under the provisions of 28 U.S.C. § 2255(f)(4). *Whiteside*, 775 F.3d at 183. Moreover, the relief which Mr. Farmer seeks, removal of his status as a career offender under U.S.S.G. § 4B1.1, has been foreclosed by the Fourth Circuit. In *United States v. Foote* the court of appeals decided that a challenge to the erroneous application of the career offender enhancement is not cognizable on collateral review. 784 F.3d 931, 936 (4th Cir. 2015), *cert. denied*, 135 S.Ct. 2850 (2015).


Thus, the Court has been presented with no basis or authority on which to reconsider its earlier dismissal of Mr. Farmer's § 2255 motion, and Mr. Farmer's instant motion must be denied.

CONCLUSION

For the foregoing reasons, petitioner's motion for reconsideration [DE 117] is DENIED.

SO ORDERED.

This the 7 day of August, 2015.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE